

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	CHAPTER NO. 13
	:	
KEITH B. KRATZKE, AND	:	CASE NO. 20-13076 - ELF
JANET C. KRATZKE	:	
	:	
<u>DEBTORS,</u>	:	
	:	
PENNSYLVANIA DEPARTMENT	:	HEARING DATE AND TIME
OF REVENUE,	:	OCTOBER 6, 2020 @ 10:00 a.m.
	:	
MOVANT,	:	
	:	
V.	:	
	:	
KEITH B. KRATZKE, AND	:	
JANET C. KRATZKE	:	
	:	
RESPONDENTS,	:	RELATED TO DOCKET NO. 2

PENNSYLVANIA DEPARTMENT OF REVENUE’S
OBJECTION TO DEBTORS’ PROPOSED CHAPTER 13 PLAN

NOW COMES the Commonwealth of Pennsylvania, Department of Revenue (hereinafter “Department”), by and through its Office of Chief Counsel and Deputy Chief Counsel Jonathan W. Chatham, and files this plan objection as authorized by 11 U.S.C. § 1324 for the following reasons to wit:

1. This objection is made on the grounds that the Plan does not comply with the provisions of Chapter 13, nor has the Plan been proposed in good faith as required by 11 U.S.C. § 1325(a)(1), and (3). The Debtors’ obligation pursuant to 11 U.S.C. § 1322(a)(2), to provide for full payment of all claims entitled to priority under 11 U.S.C. § 507 has not been met, nor have Debtors provided for full payment of the Department’s claims entitled to secure status under 11 U.S.C. § 506 as required by 11 U.S.C. § 1325(a)(5).

2. The Department's Proof of Claim, containing a secured tax claim in the amount of \$4,515.65 is not specifically treated within the Debtors' proposed Chapter 13 Plan in the proper classification or amounts. The Department's claim is docketed on the claims register, and is identified as docket number eight.
3. It is unclear how the Debtors intend to provide for the full payment of the Department's secured claim. The Plan should provide for the full payment of the Department's secured claim along with accrued interest in the amount of six (6%) percent. It appears that the Debtors may be attempting to avoid the Department's tax lien(s).
 - a. If the validity of a lien is in question, a Motion to Determine Secured Status under 11 U.S.C. § 506(a), must be commenced. See; Fed. R. Bankr. P. 4003(d) which provides that "[a] proceeding by the debtor to avoid a lien ... shall be by motion in accordance with Rule 9014." 11 U.S.C. § 506 determines the amount of a secured claim but does not govern the actual allowance or disallowance of a claim.
 - b. In order to determine the validity, priority, or extent of a lien or other interest in property, the Debtor is required to commence an adversary proceeding under Fed. R. Bankr. P. 7001(2).
 - c. Accordingly, the Debtors cannot on their own determine the secured status of the Department's lien. In re Kressler, 252 B.R. 632 (Bankr.E.D.Pa. 2000).
4. The Department believes there will be sufficient assets for the Department's liens to attach to Debtors' personal property. Nonetheless, in the event the Debtor does not have sufficient property for the Department's liens to attach to, the Department is amenable to reclassifying its claims into appropriate classifications as may be.

5. Providing for the full payment of the Department's claim would assist the Court, the Trustee, the Debtors, and the other creditors in determining the viability of the Plan.
6. The Department also objects to the confirmation of Debtors' Plan on the grounds that the Plan is underfunded.
7. Ultimately, the Department must object to the Debtors' instant Plan because it is not proposed in good faith and in compliance with 11 U.S.C. §§ 1322 and 1325.

WHEREFORE, the Department respectfully requests this Honorable Court deny confirmation of the Debtors' Proposed Chapter 13 Plan unless and until the Department's Objections have been cured and an amended plan is filed that accounts for the Department's claim(s) in the proper classification and amount.

Respectfully submitted by:

/s/ Jonathan W. Chatham
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